



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 4, 1998

Ms. E. Cary Grace
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR98-1391

Dear Ms. Grace:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 115705.

The City of Houston received a request for four categories of information concerning the inventory, sale, or documentation of materials stored at the Broad Street warehouse. You claim that requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the sample documents that you have submitted.¹

Section 552.108 of the Government Code provides:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection,

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

* * * *

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You contend that two categories of responsive documents exist. The first, submitted as Exhibit 2, contains information responsive to request items one through four. You contend that this information may be withheld under section 552.108(a)(1) because it involves "an active investigation into the possibility of criminal activities involving inventory at the Broad Street Warehouse" by the Houston Police Department's Public Integrity Review Group. You have provided a letter from the group's investigating officer which explains that an investigation exists. We believe that you have shown that the release of Exhibit 2 would interfere with the detection, investigation or prosecution of crime. Exhibit 2 may be withheld under section 552.108(a)(1). *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 216 (1978). *See* Open Records Decision No. 216 (1978). You next contend that the second type of responsive information, Exhibit 3, is excepted from disclosure by section 552.108(a)(2). Exhibit 3 consists of information responsive to request item number 4: it is an offense report generated by the Houston Police Department. You state that the report may be withheld under section 552.108(a)(2) because the information relates to a criminal investigation "that did not result in conviction or deferred adjudication." A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred

adjudication. Although you do not explicitly state the current status of the investigation, it is evident from your argument and the face of the requested material that the materials concern an investigation that has concluded in a final result other than a conviction or deferred adjudication. We conclude that you may withhold Exhibit 3 under section 552.108(a)(2).

We note, however, that information normally found on the front page of an offense report is generally considered public. *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, you must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. Gov't Code § 552.108(c); *see* Open Records Decision No. 127 (1976) (summarizing the types of information deemed public by *Houston Chronicle*).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 115705

Enclosures: Submitted documents

cc: Mr. Wayne Dolcefino
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(w/o enclosures)